



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Telecommunications Consumers Division
445 12th Street, SW, Suite 4-C232
Washington, D.C. 20554

November 15, 2011

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND VIA E-MAIL

WHDH TV
Attn: Mike Carson
Vice President and General Manager
7 Bulfinch Place
Boston, MA 02114

station_management@whdh.com

Re: EB-11-TC-TC-119

The Enforcement Bureau (Bureau) is investigating potential violations of section 79.2(b) of the Commission's rules.¹ This letter of inquiry (LOI, letter, or inquiry) seeks information from WHDH TV of Boston, Massachusetts, licensee of NBC (WHDH or the Company), to enable the Commission to determine whether the Company's coverage of Hurricane Irene on August 26, 2011 provided critical emergency information to consumers with hearing or vision disabilities.

The Instructions for responding to this letter and the Definitions for certain terms used in this letter are contained in this document. We direct the Company to provide the information and documents specified below within ten (10) calendar days from the date of this letter.

Unless otherwise indicated, the period of time covered by these inquiries is January 1, 2011 to the present.

¹ 47 C.F.R. § 79.2(b). See also *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996, Accessibility of Emergency Programming*, Second Report and Order, 15 FCC Rcd 6615, 6618 (2000); *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, 15250 (2000) *reversed on other grounds*, *Motion Picture Ass'n of America v. FCC*, 309 F.3d 796 (DC Cir. 2002).

Documents and Information to be Provided:

1. State the precise date(s) and time(s) during which the Company's Hurricane Irene coverage included emergency information. For each time listed, denote whether the coverage was a part of a regularly scheduled newscast, a newscast that interrupted regularly scheduled programming, or was accompanied by an aural tone.
2. State whether the Company disseminated all emergency information related to Hurricane Irene coverage through aural and visual presentation. If not, describe the circumstances that led the Company not to disseminate the emergency information aurally or visually, or both.
3. Provide a DVD(s) that contains all programming related to the Company's Hurricane Irene coverage, including all audio and visual presentations. The DVD(s) should clearly identify the date(s) and hour(s) associated with when the coverage ran and some timing mechanism on the DVD that will enable a reference point for where specific coverage can be retrieved.
4. If the Company's Hurricane Irene coverage included visual presentation of emergency information that is not included on the DVDs submitted in response to question 3, provide a transcript that clearly identifies emergency information that the Company presented visually during its broadcast that is not included on the DVD(s), including but not limited to any emergency captioning information, crawls, scrolls, or other text or graphical forms of communication. The transcripts should include the corresponding time on the DVD's timing mechanism so that we may determine where the emergency information contained in the transcript was presented in the Hurricane Irene coverage.
5. State the number of complaints the Company has received from January 1, 2011 through September 30, 2011, alleging that the Company's dissemination of any emergency information was not accessible to visually or aurally impaired persons, or both.
6. Provide copies of complaints the Company has received since August 1, 2011, alleging that the Company's dissemination of emergency information during its Hurricane Irene coverage was not accessible to visually or aurally impaired persons. Provide copies of all complaints received and all related documents, including any written responses and any steps that the Company took to respond to the complainant.
7. State when the Company's current broadcast license was renewed and the expiration date of the Company's current license term. Provide supporting documentation.

Instructions

Request for Confidential Treatment. If the Company requests that any information or documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. If the Company requests confidentiality, it shall file one (1) redacted version of its response (including all documents) in addition to the two (2) hard copies and three (3) electronic copies specified in this letter of inquiry identified under the heading "Filing Requirements."

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The Company is advised to strictly comply with the requirements of section 0.459 when requesting confidential treatment, including the standards of specificity mandated by section 0.459(b). Specifically, in its written statement requesting confidential treatment, the Company **must** provide reasons for withholding the materials (or portions thereof) from inspection and **must** provide the facts upon which those records are based. In particular, requests for confidential treatment **must** include all of the information specified in section 0.459(b).

Blanket requests for confidentiality of a large set of documents and requests for confidentiality that do not comply with section 0.459 are unacceptable. If only a portion of a document is confidential, then **only** that portion shall be so designated. **Pursuant to section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of section 0.459.**

Claims of Privilege. If the Company withholds any information or documents under claim of privilege, it shall redact the information or documents it contends are privileged and provide the redacted documents as well as submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry to which each item responds and the type, title, specific subject matter and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Method of Producing Documents. Each requested document, as defined herein, shall be submitted in its entirety, even if only a portion of that document is responsive to an inquiry made herein. This means that the document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other documents referred to in the document or attachments. All written materials necessary to understand any document responsive to these inquiries must also be submitted.

Identification of Documents. For each document or statement submitted in response to the inquiries stated in the cover letter, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the document was retrieved. If any document is not dated, state the date on which it was prepared. If any document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Company must identify with reasonable specificity all documents provided in response to these inquiries.

Documents No Longer Available. If a document responsive to any inquiry made herein existed but is no longer available, or if the Company is unable for any reason to produce a document responsive to any inquiry, identify each such document by author, recipient, date, title, and specific subject matter, and explain fully why the document is no longer available or why the Company is otherwise unable to produce it.

Retention of Original Documents. With respect only to documents responsive to the specific inquiries made herein and any other documents relevant to those inquiries, the Company is directed to retain the originals of those documents for twelve (12) months from the date of this letter unless: (a) the Company is directed or informed by the Enforcement

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Bureau in writing to retain such documents for some shorter or longer period of time, or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Company must retain all such documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice, or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Continuing Nature of Inquiries. **The specific inquiries made herein are continuing in nature. The Company is required to produce in the future any and all documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein.** In this regard, the Company must supplement its responses: (a) if the Company learns that, in some material respect, the documents and information initially disclosed were incomplete or incorrect, or (b) if additional responsive documents or information are acquired by or become known to the Company after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless: (a) the Company is directed or informed by the Enforcement Bureau in writing that the Company's obligation to update the record will continue for some shorter or longer period of time, or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Definitions

For purposes of this letter, the definitions set forth in 47 C.F.R. §§ 79.1 through 79.3 shall apply as applicable, and are hereby incorporated by reference. In addition, and without limiting the forgoing, the following definitions apply to this letter:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Aural presentation" shall mean dissemination of programming that is intended to be heard.

"Company" shall mean the entity broadcasting under the name WHDH TV of Boston, Massachusetts, 7 News NBC, licensee of NBC, and any predecessor-in-interest, successor-in-interest, affiliate, parent company, any wholly or partially owned subsidiary, or other affiliated company(s) or business(es), and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the forgoing at any time during the period covered by this letter.

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“Complaint” means, without limitation, any communication, whether written or oral, in which a person or other entity contacts the Company, the FCC, or any other organization to complain, comment, or inquire about an element or aspect of the services provided by the Company.

“Coverage” shall mean any broadcast that includes the monitoring, tracking, reporting, or presentation of any information.

“Document” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made.

“Identify,” when used with reference to a person or persons, shall mean to state his/her full legal name, job title (if any), current business address, and business phone number. If business address and/or telephone number are not available, provide the person’s home address and/or telephone number.

“Identify,” when used with reference to a document, shall mean to state the date, author, addressee, type of document (*e.g.*, the types of document, as described above), and a brief description of the subject matter, its present or last known location, and its custodian.

“Identify,” when used with reference to an entity other than a person, shall mean to state its name, current or last known business address, and current or last known business telephone number.

Filing Requirements

We direct the Company to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Company with personal knowledge of the representations provided in the Company’s response, verifying the truth and accuracy of the information therein, and that all of the information requested by this letter that are in the Company’s possession, custody, control or knowledge have been produced. If multiple Company employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Company noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting.

All such declarations provided must be substantially in the form set forth in section 1.16 of the Commission’s rules.² Failure to support your responses with a sworn affidavit could subject you to forfeiture.³

² See 47 C.F.R. § 1.16.

³ See *SBC Communications, Inc.*, Apparent Liability for Forfeiture, 17 FCC Rcd 7589, 7592-7594 (2002).

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In responding to this LOI, be advised that it is a violation of section 1.17 of the Commission's rules for any person or a staff member of that person to make any false or misleading written or oral statement of fact.⁴ Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.⁵

Further, the knowing or willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

This LOI constitutes an order to produce the documents and information requested herein. Failure to respond to this LOI in accordance with its terms and by the filing deadline is a violation of an order issued by the Commission, and could subject you or the Company to forfeiture.⁶

We also direct the Company to include a reference label on each document that identifies the document and an index indicating the title and corresponding reference label for each document submitted in response to this letter.

The Company shall provide two (2) hard copies and three (3) copies in electronic form. The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source. Electronic spreadsheets when submitted should be in their original file format (e.g., Excel). The Company should clearly and completely label all columns and rows of each spreadsheet or database, denote the Company and station name, and identify the number and subpart of the request in the title at the top of each spreadsheet or database, in the file name of each spreadsheet or database, and on the label of each electronic media device (such as a CD or other device) submitted. For documents and data submitted electronically, each electronic media device must be labeled so as to identify the contents of that media device, including the document control numbers of those documents contained on the device. For responses filed in hard copy, documents must be labeled with control numbers corresponding to the responses filed in electronic form.

If sent by messenger or hand delivery, the Company's response should be sent to

⁴ See 47 C.F.R. § 1.17.

⁵ 47 C.F.R. § 1.17

⁶ See 47 U.S.C. § 503(b)(1)(B).

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Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554, to the attention of Sharon D. Lee, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, 445 12th St. SW, Room 4-A222, Washington, D.C. 20554, with a copy to Rhonda J. Lien, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, 445 12th St. SW, Room 4-A262, Washington, D.C. 20554. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743 to the attention of Sharon D. Lee, Deputy Division Chief, Telecommunications Commission, Enforcement Bureau 4-A222, with a copy to Rhonda J. Lien, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, Room 4-A262, Federal Communications Commission.

If sent by first-class, Express, or Priority mail, two (2) hard copies and three (3) copies in electronic form of the Company's response should be sent to Sharon D. Lee, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A222, Washington, D.C. 20554, with a copy in each format to Rhonda J. Lien, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A262, Washington, D.C. 20554.

In addition, the Company shall, to the extent practicable, submit a copy of the response via e-mail with all attachments to sharon.lee@fcc.gov, and rhonda.lien@fcc.gov.

Sincerely,



Richard A. Hindman
Division Chief
Telecommunications Consumers Division
Enforcement Bureau

cc: Sharon D. Lee
Rhonda J. Lien